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PATENT
Customer No. 22,852
Attorney Docket No. 09812.0461-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Nobuyuki KIHARA, et al.)
) Group Art Unit: 2143
Application No.: 09/674,441)
) Examiner: Shin, Kyung H.
Filed: November 1, 2000)
) Confirmation Number: 8620
For: DATA PROCESSING DEVICE,)
DATA PROCESSING)
METHOD, TERMINAL UNIT,)
TRANSMISSION METHOD)
FOR DATA PROCESSING)
DEVICE)

Mail Stop Appeal Brief--Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)

Transmitted herewith is the APPEAL BRIEF in this application with respect to the
Notice of Appeal filed on March 27, 2006.

This application is on behalf of

☐ Small Entity ☒ Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ \$250.00 (Small Entity)

☒ \$500.00 (Large Entity)

TOTAL FEE DUE:

Appeal Brief Fee \$500.00

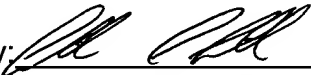
Extension Fee (if any) \$0
Total Fee Due \$500.00

☒ Enclosed is a check for \$500.00 to cover the above fees.

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 06-0916. A duplicate copy of this paper is enclosed for use in charging the deposit account.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 26, 2006

By: 

Arthur A. Smith
Reg. No. 56,877



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Attention: Mail Stop Appeal Brief-Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed March 27, 2006, and further to Board Rule 41.37, Appellants presents this brief and enclose herewith a check for the fee of \$500.00 required under 37 C.F.R. § 41.20(b)(2).

This Appeal responds to the October 28, 2005, final rejection of claims 1-4 and 16 under 35 U.S.C. § 103(a).

If any additional fees are required or if the enclosed payment is insufficient, 05/30/2006 JADD01 00000004 09674441
01 FC:1402 500.00 0P

Appellants request that the required fees be charged to Deposit Account No. 06-0916.

I. REAL PARTY IN INTEREST

SONY Corporation is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-4 and 16 remain pending and under examination. Claims 5-15, 17, and 18 have been cancelled. Appellants appeal the rejection of claims 1-4 and 16.

IV. STATUS OF AMENDMENTS

The Amendment After Final filed on January 26, 2006 proposed to amend the claims to add new dependent claims 19 and 20, but did not propose any changes to the claims in this Appeal. The Examiner denied entry of the proposed amendment in the Advisory Action dated February 27, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter on appeal prevents data, such as digital music files, from being illegally copied. In particular, the claimed invention utilizes the move/copy history of the data to prevent unauthorized copying. The move/copy history, for example, uniquely identifies when data is moved or copied from a large capacity memory, such as a host or hard disk drive, to a portable medium, such as a memory card, or another host. Referencing this history then prohibits unauthorized copying.

Although prior art systems generally use encrypting technologies to prevent unauthorized copying (see *Specification*, pp. 1 and 2), copying the data to another hard disk drive prior to moving the data to a portable medium undesirably circumvents these encrypting technologies. (*Id.* at p. 99.) The claimed invention addresses and overcomes this problem.

Independent claim 1 recites a data processing apparatus (Fig. 34). A large capacity memory means (Fig. 34, elements 201 (HDD); and Fig. 36, elements HDD 1 and HDD 2) for storing a plurality of files (*Specification*, p. 98, lines 18-20). A memory means (Fig. 34, element 203) for storing move/copy history indicative of the movement of a particular file when the particular file is moved/copied from the large capacity memory means to a non-volatile memory (*Specification*, p. 98, lines 2-9; p. 100, lines 13-18; Fig. 34, elements 201 (HDD) and 40; and Fig. 36, elements HDD 1, HDD 2, 40X, and 40Y). A reference means (Fig. 32, element 202) for referencing the history information stored in the memory means when the particular file is moved/copied from the large capacity memory means to the non-volatile memory (*Specification*, p. 98, lines 23-25). A control means (Fig. 32, element 202) for prohibiting the particular file from being moved/copied from the large capacity memory means to the non-volatile memory when the reference means has detected that the history information is stored in the memory means (*Specification*, p. 101, lines 7-9 and 15-19).

Independent claim 16 recites a data processing method (Fig. 37). The method includes storing move/copy history indicative of the movement of a particular file when the particular file is moved/copied from a large capacity memory (Fig. 34, elements 201 (HDD); and Fig. 36, elements HDD 1 and HDD 2) that stores a plurality of files to a non-

volatile memory (*Specification*, p. 98, lines 2-9; p. 100, lines 13-18; Fig. 34, elements 201 (HDD) and 40; and Fig. 36, elements HDD 1, HDD 2, 40X, and 40Y). The claimed method further includes referencing the history information stored in the memory when the particular file is moved/copied from the large capacity memory to the non-volatile memory (*Specification*, p. 100, line 24 - p. 101, line 9); and prohibiting the particular file from being moved/copied from the large capacity memory to the non-volatile memory when the history information is stored in the memory (*Specification*, p. 101, lines 7-9 and 15-19).

VI. Grounds of Rejection

Claims 1-4 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Stock et al.* (U.S. Patent No. 6,011,858) in view of *Tanaka et al.* (U.S. Patent No. 5,682,549).

VII. Arguments

Appellants respectfully request the Board to reverse the Examiner's rejections of claims 1-4 and 16. *Stock et al.* and *Tanaka et al.*, taken alone or in any reasonable combination, fail to teach or disclose all the limitations of independent claims 1 and 16.

Stock et al. and *Tanaka et al.* fail to disclose a "memory means for storing move/copy history indicative of the movement of a particular file" and a "reference means for referencing the history information," as recited in independent claims 1 and 16. Further, *Stock et al.* and *Tanaka et al.* fail to disclose a "control means for prohibiting the particular file from being moved/copied ... when said reference

means has detected that the history information is stored in said memory means," as also recited in independent claims 1 and 16.

Stock et al. discloses a memory card capable of storing data, wherein access to the data is protected by utilizing a user's biometric information for security purposes. (*Stock et al.*, col. 1, lines 6-10.) In particular, not only is data stored on the memory card, but so is biometric information of the owner/authorized user of the card. (*Id.* at col. 4, lines 28-33 and lines 40-43.) The data stored on the memory card may include financial, medical, and insurance information. (*Id.* at col. 4 lines 4-13.) The biometric information stored on the card may include the patterns of a finger, palm, retina, voice, or signature. (*Id.* at col. 4, lines 24-27.) The only thing that limits access (i.e., reading, writing, or revising) to the data stored on the memory card is a precondition that the biometric information be verified. (*Id.* at col. 4, lines 56-59.)

In an attempt to show the claimed memory means and control means, the Examiner misapplies and misinterprets the disclosure of *Stock et al.* For the teaching of a "memory means for storing move/copy history indicative of the movement of a particular file," the Examiner cites col. 3, line 67 - col. 4, line 4 and col. 4, lines 28-36 of *Stock et al.* (*Final Office Action*, p. 4.) Specifically, *Stock et al.* discloses:

In the preferred embodiment of the present invention, memory card 20 comprises an MPCOS card such that information specific to the user for one or more applications can be stored and maintained on the card. (*Stock et al.*, col. 3, line 67 - col. 4 line 4.)

Referring specifically to memory card 20 as shown in FIG. 1, memory card 20 includes processing circuitry 22 for processing the personal information of the user so that this information can be downloaded or written to memory card 20, accessed, and revised based on use of memory card 20

by the user. Processing circuitry 22 is connected to an application file structure 24 which stores and maintains the personal information of the user for one or more applications. (*Stock et al.*, col. 4, lines 28-36.)

Nowhere in the above passages is there a mention of “move/copy history indicative of the movement of a particular file.” *Stock et al.* only discloses that data may be written to the memory card, and data already existing on the memory card, may be accessed and revised.

The Examiner interprets the term “transaction” of *Stock et al.* to teach “move/copy history indicative of the movement of a particular file.” (See *Final Office Action*, pp. 2-3 and *Advisory Action*, p. 2.)

The Storck [sic] (6,011,858) prior art discloses the storage and manipulation of file move and copy history information within a file structure. By definition, a transaction is an activity or request. Typical **transactions** are considered to be an order, purchase, **change**, **addition** and **deletion**. These types of transactions update one or more master files and serve as both an audit trail and **history** for future analyses. (1.<http://www.answers.com/transaction&r-67>). (*Final Office Action*, p. 2) (emphasis in original).

The claim language as presented in claims 1 and 16 recite, “move/copy history **indicative of the movement of a particular file.**” (emphasis added.) *Stock et al.*, discloses that financial transactional data recorded on the memory card is analogous to the financial transactional data recorded on a printed receipt (i.e., customer’s signature and credit card number) and by storing this data on the memory card, printed receipts may be eliminated. (*Stock et al.*, col. 6, lines 1-12.) In particular, *Stock et al.* discloses that the biometric system can “record the credit card transactions on the memory card.”

(*Id.* at col. 6, lines 7-8.) In other words, just as with a printed receipt, a “record” is made of a transaction, a **file** is not moved or copied. *Stock et al.* does not disclose the movement or copying of a particular file; instead, data pertaining to the financial transaction is recorded. And, as with a printed receipt, the recorded data may be used as an “audit trail” or a “history” of the completed financial transaction to allow a user to review, for example, the purchase price of a particular item. However, the recorded data is not equivalent to “move/copy history,” since it is not “indicative of the movement of a particular file,” as recited in independent claims 1 and 16.

For the teaching of a “control means for prohibiting the particular file from being moved/copied ... when said reference means has detected that the history information is stored in said memory means,” the Examiner again cites col. 3, line 67 - col. 4, line 4 and col. 4, lines 28-36 of *Stock et al.* (*Final Office Action*, p. 4.) However, the only prohibition disclosed by *Stock et al.* for accessing data stored on the memory card, is a biometric verification. (*Stock et al.*, col. 4, lines 56-59.) In response to this argument, the Examiner has stated:

The Stock (6,011,858) prior art discloses a file directory consisting of data structures. These data structures consist of multiple fields containing information with an indication of whether it is history information. A check of the file directory can indicate whether this particular data structure exists. If no history information exists, the particular file cannot be moved/copied. (see Stock col. 3, lines 1-5; file structure; col. 4, lines 33-36; col. 4, lines 56-59; storage of data; col. 3, line 67 - col. 4, line 4, lines 28-36; file directory structure, information written (i.e. copy), revised (i.e., move), transaction (i.e. history) information) (*Advisory Action*, p. 2).

As the Examiner correctly states, *Stock et al.* discloses a file structure that includes a security file structure 26 for storing biometric information that is used to limit access to data that is stored in an application file structure 24. (*Stock et al.*, col. 4, lines 40-43.) And after a review of Fig. 1, one may even conclude that the Examiner is correct in asserting that these file structures may include “multiple fields.” However, *Stock et al.* does not disclose that these “multiple fields” contain “information with an indication of whether it is history information,” as asserted by the Examiner. Moreover the only use of the term “fields” within *Stock et al.* is in the heading, “Field of Invention.” The only use of the term “history” is in claim 6, and in that context, “history” is limited to medical history information of a user and not a file. *Stock et al.* fails to disclose the storing of a file history within the file structure. Instead, *Stock et al.* discloses that the only thing stored in the file structure is personal information (data) of the user. (*Id.* at col. 4, lines 33-36.)

Further, *Stock et al.* fails to disclose “prohibiting the particular file from being moved/copied from said large capacity memory means to the non-volatile memory when said reference means has detected that the history information is stored in said memory means.” According to the Examiner’s interpretation, *Stock et al.* teaches that “[i]f no history information exists, the particular file cannot be moved/copied.” (*Advisory Action*, p. 2.) Such an interpretation would lead to the conclusion that *Stock et al.* discloses that if the history information did exist, then the particular file could be moved/copied. However, independent claims 1 and 16 recite “**prohibiting** the particular file from being moved/copied” when “history information **is** stored in said memory means.” (emphasis added.)

Tanaka et al. does not cure the noted deficiencies of *Stock et al.*, nor does the Examiner rely on *Tanaka et al.* for these teachings. (*Final Office Action*, p. 5.) *Tanaka et al.* discloses an image data management system for transferring image data between a portable small card 32 and an image data registration apparatus 2, which includes an image data memory device 25. (*Tanaka et al.*, col. 3, lines 16-67.) In *Tanaka et al.*, whether the image data is deemed to be secret is the only limitation placed on transferring image data between the portable small card and the image data memory device 25. (*Id.* at col. 6, lines 1-10; col. 9, lines 44-55; and col. 15, lines 38-47.) As a result, *Tanaka et al.*, at a minimum, fails to disclose “prohibiting the particular file from being moved/copied from said large capacity memory means to the non-volatile memory when said reference means has detected that the history information is stored in said memory means,” as recited in independent claims 1 and 16.

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to independent claims 1 and 16, Appellants respectfully request that the rejection of these claims under 35 U.S.C. § 103(a) be reversed by the Board.

Claims 2-4 depend from claim 1. As explained, claim 1 is distinguishable from *Stock et al.* and *Tanaka et al.* Accordingly, claims 2-4 are also distinguishable from these references for at least the same reason set forth above in connection with claim 1. Therefore, Appellants respectfully request that the Board reverse the rejection of these claims under 35 U.S.C. § 103(a).

VIII. Conclusion

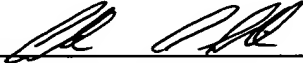
For the reasons given above, pending claims 1-4 and 16 are allowable and reversal of the Examiner's rejection is respectfully requested.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 26, 2006

By: 
Arthur A. Smith
Reg. No. 56,877

IX. Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)

1. A data processing apparatus, comprising:

large capacity memory means for storing a plurality of files;

memory means for storing move/copy history indicative of the movement of a particular file when the particular file is moved/copied from said large capacity memory means to a non-volatile memory;

reference means for referencing the history information stored in said memory means when the particular file is moved/copied from said large capacity memory means to the non-volatile memory; and

control means for prohibiting the particular file from being moved/copied from said large capacity memory means to the non-volatile memory when said reference means has detected that the history information is stored in said memory means.

2. The data processing apparatus as set forth in claim 1,

wherein files stored in said large capacity memory means have been compressed corresponding to a predetermined compressing method.

3. The data processing apparatus as set forth in claim 1,

wherein files stored in said large capacity memory means have been encrypted corresponding to a predetermined encrypting method.

4. The data processing apparatus as set forth in claim 1,

wherein said memory means is composed of a flash memory.

16. A data processing method, comprising the steps of:

storing move/copy history indicative of the movement of a particular file when the particular file is moved/copied from a large capacity memory that stores a plurality of files to a non-volatile memory;

referencing the history information stored in the memory when the particular file is moved/copied from the large capacity memory to the non-volatile memory; and

prohibiting the particular file from being moved/copied from the large capacity memory to the non-volatile memory when the history information is stored in the memory.

X. Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)

Appellants do not rely on any evidence in this Appeal.

XI. Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

To Appellants' knowledge, there are no related proceedings or decisions.